



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Washington, D.C. 20230

In the Matter of:)
)
Donald V. Bernardo)
a/k/a Don Bernardo)
701 Fredericksburg Road)
Mathews, NC 28105)
)
)
)

ORDER DENYING EXPORT PRIVILEGES

On November 16, 2011, in the U.S. District Court, Southern District of Florida, Donald V. Bernardo, a/k/a Don Bernardo (“Bernardo”), was convicted of Section 38 of the Arms Export Control Act (22 U.S.C. § 2778 (2006 & Supp. IV 2010)) (“AECA”). Specifically, Bernardo was convicted of knowingly and willfully engaging in the business of brokering activities involving Venezuela in negotiating and arranging contracts, purchases, sales, and transfers of defense articles, that is, C-130 Hercules military transport aircraft, in return for a fee, commission and other consideration, without first registering with the U.S. Department of State. Bernardo was sentenced to 12 months of imprisonment and two years of supervised release, and fined a \$100 assessment. Bernardo was released from prison on February 28, 2013. Bernardo is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (“EAR” or “Regulations”)¹ provides, in pertinent part, that “[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (“EAA”), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. § 1701-1706); 18 U.S.C. §§ 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. § 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. § 2778).” 15 C.F.R. § 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 C.F.R. § 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security’s Office of Exporter Services may revoke any Bureau of Industry and Security (“BIS”) licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Bernardo’s conviction for violating the AECA, and have provided notice and an opportunity for Bernardo to make a written submission to BIS, as

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401-2420 (2000)) (“EAA”). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 Fed. Reg. 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2006 & Supp. IV 2010)).

provided in Section 766.25 of the Regulations. I have not received a submission from Bernardo.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Bernardo's export privileges under the Regulations for a period of five years from the date of Bernardo's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Bernardo had an interest at the time of his conviction.

Accordingly, it is hereby

ORDERED

I. Until November 16, 2016, Donald V. Bernardo, a/k/a Don Bernardo, with a last known address at: 701 Fredericksburg Road, Mathews, NC 28105, and when acting for or on behalf of Bernardo, his representatives, assigns, agents or employees (the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving

any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.
- II. No person may, directly or indirectly, do any of the following:
- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
 - B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;
 - C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
 - D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
 - E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item,

of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Bernardo by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order is effective immediately and shall remain in effect until November 16, 2016.

V. In accordance with Part 756 of the Regulations, Bernardo may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VI. A copy of this Order shall be delivered to the Bernardo. This Order shall be published in the *Federal Register*.

Eileen M. Albanese
Acting Director
Office of Exporter Services

Dated: December 6, 2013.

[FR Doc. 2013-29788 Filed 12/13/2013 at 8:45 am; Publication Date:
12/16/2013]